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JOHN T. REY, Clerk

In the
Supreme Court of the United States

October Term, 1957

No. 146

THE UNITED STATES,

Petitioner

v.

**HOWARD A. McNINCH, D/B/A THE HOME COM-
FORT CO., ROSALIE McNINCH AND GARIS P.
ZEIGLER; FREDERICK L. TOEPPLEMAN; AND
CATO BROS., INC., WILFRED R. CATO, WILLIAM
R. CATO, AND MAGIE L. DUNN (NEE: MAGIE
L. STONE),**

Respondents

**On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

**MOTION TO TRANSFER CASE FROM
SUMMARY CALENDAR**

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**CHRISTIAN, BARTON,
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CHARLES W. LAUGHLIN**
Of Counsel

February, 1958

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Richmond, Virginia
*Counsel for Cato Bros., In-
corporated, et al*

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R. CATO, AND MAGIE L. DUNN (NEE: MAGIE
L. STONE)

Respondents

On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

**MOTION TO TRANSFER CASE FROM
SUMMARY CALENDAR**

Respondents in the above entitled cause, Howard A. McNinch, D/B/A The Home Comfort Co., Rosalie McNinch and Garis P. Zeigler; and Cato Bros., Incorporated, Wilfred R. Cato, William R. Cato and Magie L. Dunn (nee: Maggie L. Stone) move this honorable Court to transfer this cause from the summary calendar and permit one hour's time for argument by respondents, such time to be divided between two counsel.

In support of this motion the following facts are set forth:

1. This cause involves three separate cases arising from decisions in three separate districts and involving three distinct, separate and fundamentally distinguishable fact situations. The cases have never been tried or argued together.

2. In the case of *United States v. Howard McNinch, D/B/A The Home Comfort Company, Rosalie McNinch and Garis P. Zeigler*, counsel for the respondent will desire to argue primarily, if not solely, the question of whether or not a "claim" was presented against the government within the meaning of the False Claims Act.

3. In the case of *United States v. Cato Bros., Incorporated, Wilfred R. Cato, William R. Cato and Magie L. Dunn (nee: Magie L. Stone)*, counsel for the respondent will desire to argue primarily, if not solely, the question of whether or not the False Claims Act applies to a government corporation, assuming a claim was made against such a corporation.

4. In the Court below, in neither case did counsel for the respective respondents mentioned above brief, argue or urge upon the court the point desired to be argued primarily by counsel for the other respondent.

5. If the case is allowed to remain upon the summary calendar, only one counsel will be heard for all respondents and only one-half hour will be allowed for the entire argument.

6. In this event, at least one of the respondents mentioned above will be prejudiced, since counsel arguing the case will have to argue a point with which he is not familiar

and with which he is not primarily concerned in his particular case. Furthermore, it is felt that the Court may not be fully appraised of both points if but one counsel is permitted to argue and but one-half hour is permitted for argument.

7. The Solicitor General, petitioner in this cause, will not oppose the granting of this motion.

HOWARD A. MCNINCH, D/B/A
THE HOME COMFORT CO., ROS-
ALIE MCNINCH and GARIS P.
ZEIGLER

By Counsel

EDWIN P. GARDNER, *of Counsel*

CATO BROS., INCORPORATED,
WILFRED R. CATO; WILLIAM
R. CATO and MAGIE L. DUNN
(NEE: MAGIE L. STONE)

By Counsel

A. C. EPPS, *of Counsel*

CERTIFICATE OF SERVICE

We, Edwin P. Gardner, counsel of record for the respondent Howard A. McNinch, D/B/A The Home Comfort Co., Rosalie McNinch and Garis P. Zeigler, and A. C. Epps, counsel of record for the respondent Cato Bros., Incorporated, Wilfred R. Cato, William R. Cato and Magie L. Dunn (nee: Magie L. Stone), do hereby certify that the foregoing motion was served upon petitioner by depositing a true and complete copy thereof in a United States post office box, with first class postage prepaid, addressed to the Solicitor General, Department of Justice, Washington 25, D. C., in conformity with Rule 33(2) of this Court on the

..... day of, 1958.

EDWIN P. GARDNER

A. C. EPPS